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FISCAL IMPACT STATEMENT

LS 6193

BILL NUMBER: SB 45

NOTE PREPARED: Apr 9, 2007

BILL AMENDED: Apr 9, 2007

SUBJECT: Judicial Discretion and Sexually Violent Predators.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR: Rep. L. Lawson

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill specifies the procedure for determining who is a sexually violent predator, and revises the definition of "sex offense". It places certain restrictions on sex offenders who are offenders against children, and it makes other changes and conforming amendments.

The bill also requires a court to issue a sentencing statement after the court has pronounced a sentence for a felony conviction.

It provides that a court is not required to use an advisory sentence in imposing consecutive sentences for felony convictions that are not crimes of violence arising out of an episode of criminal conduct.

It also provides that an indictment or information may be amended at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant.

(Amended) *Battery by Body Waste:* The bill makes it battery by body waste, a Class D felony, for a person to knowingly or intentionally in a rude, insolent, or angry manner place blood or another body fluid or waste on a probation officer, firefighter, or first responder (in addition to other law enforcement officers or corrections officers) while the victim is engaged in the performance of official duties. It enhances the penalties for committing battery by body waste if the body waste is infected with hepatitis C. (Current law enhances the penalty if the body waste is infected with hepatitis B, HIV, or tuberculosis.)

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: *Technical Corrections:* The bill makes technical corrections to incorporate legislation passed in the 2006 legislative session that made changes to the sentencing, parole, and probation requirements for sex offenders and a subset of sex offenders, sexually violent predators. The technical corrections have no fiscal impact.

Sexually Violent Predator Status: The bill clarifies that the crime committed or the determination of the court based upon the recommendation of a board of experts classifies an offender as a sexually violent predator, and that the court does not have discretion to determine on the record that an offender is a sexually violent predator. To the extent that offenders who otherwise would not be classified are determined by the court to be sexually violent predators, this change could reduce the number of offenders labeled as sexually violent predators. There is no information available to know if courts have made such determinations or how many offenders may be involved.

Background on Sexually Violent Predator Status: There are 1,621 offenders listed in the Sex Offender Registry as sexually violent predators under IC 35-38-1-7.5. In the past, the Department of Correction (DOC) estimated that fewer than 50 are currently either in DOC facilities or have been released and that two offenders a year are determined to be sexually violent predators, on average. The large increase in the number of sexually violent predators is the result of revisions of IC 35-38-1-7.5 that became effective on July 1, 2006.

Date of Conviction: The bill also indicates that, regardless of when the person committed the offense, an offender is a sexually violent predator if the offender committed a qualifying crime or committed an offense that is listed in IC 11-8-8-5 while having a previous unrelated conviction for a crime listed in that section. To the extent that certain offenders who may not have been classified as a sexually violent predator due to the date of their offense may now be classified as sexually violent predators, costs for state and local governments could increase. Requirements placed on sexually violent predators that increase costs for state and local government include among other things:

- (1) Lifetime registration as a sex offender.
- (2) Restriction on residence location.
- (3) Restriction on credit time earned during incarceration.
- (4) Lifetime parole violation crimes that are Class D or Class C felonies.
- (4) Lifetime probation or parole.
- (5) Wearing a GPS tracking device while on probation or parole.
- (6) Participation in treatment.

Background on Date of Conviction: There are no data to indicate how many more offenders may be sexually violent predators if the classification applies regardless of when the person committed the offense. Predicting the future costs of providing these offenders with GPS monitoring and lifetime parole supervision is difficult due to changes in technology and organizational arrangements. The cost of GPS monitoring has decreased rapidly in the past five years. The costs of actual staff monitoring may depend on the arrangements that the Department of Correction makes with local probation and community correction programs.

Advisory Sentence: The bill would allow the court more discretion in determining the length of subsequent sentences when the sentences are for felony convictions that do not arise out of an episode of criminal conduct. It also specifies that in imposing a consecutive sentence for felony convictions that are not crimes of violence and that arise out of an episode of criminal conduct, the court is required to use the advisory sentence (midpoint between the range maximum and minimum). The longer the length of sentence, the longer

an offender will serve in a state correctional facility. Ultimately, the fiscal impact of these changes will be based on the decisions of the court in determining the length of the sentence or by using the advisory sentence.

Background on Consecutive Sentences: The following table developed from Department of Correction CY 2006 admission data provides information on the number of sentences affected by the changes in the bill:

*Number of Offenders Admitted...	Court Action Under the Bill	Number / Percentage of Total Admissions**
...with multiple felony convictions that do not arise out of an episode of criminal conduct	Court is not required to use advisory sentence.	1,789 / 12.7%
...with multiple felony convictions that arise out of an episode of criminal conduct, but are not crimes of violence***	Court is required to use the advisory sentence.	1,778 / 12.6%
*Number is based the cause number for each felony offense, assuming that identical cause number on multiple sentences indicates the sentences arose out of a single episode of criminal conduct. **Total Admissions in CY 2006 were 14,089. ***Crimes of violence as defined in IC 35-50-1-2.		

(Revised) *Battery by Body Waste:* There are no data available to indicate if the addition of probation officers, firefighters, or first responders to the victims of the crime would increase the number of people convicted of battery by body waste, a Class D felony. Also, there are no data available to indicate if more people would be convicted of the Class B, C, or D felony of battery by body waste if hepatitis C is added to the definitions of the crimes.

Between 2001 and 2005, on average, there were 2 offenders committed to a state correctional facility a year for the Class C offense and 37 offenders a year committed for the Class D felony. In the same time period, there were 2 offenders total committed for the Class B felony.

Depending upon mitigating and aggravating circumstances, a Class B felony is punishable by a prison term ranging from 6 to 20 years, a Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class B felony offenders is approximately 3.7 years, for all Class C felony offenders is approximately 2 years, and for all Class D felony offenders is approximately 10 months.

Explanation of State Revenues: (Revised) *Battery by Body Waste:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B, C, or D felony is \$10,000. Criminal fines

are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Local Law Enforcement Agencies (LLEA)*: Extending the amount of time that offenders must register as sex offenders will increase the responsibilities of the local law enforcement agencies. Their responsibilities include:

- forwarding a copy of a sex offender's registration form to the DOC and every local law enforcement agency having jurisdiction in the area where the offender is located;
- taking and publishing photographs of offenders on the Sheriffs' Sex Offender Registry web site;
- informing other local law enforcement agencies if an offender moves, starts employment, vocation, or enrollment within another LLEA's jurisdiction;
- notifying other states if an offender changes residence, place of employment, or enrollment to the other state;
- verifying offenders' addresses; and
- notifying the prosecuting attorney and DOC if an offender fails to return a signed registration form.

Increasing the number of offenders who will be monitored as sexually violent predators could increase costs to the local law enforcement authorities. These agencies will be required to send notifications in the mail to the sexually violent predators and make personal visits to their residences. The added costs for these types of responsibilities were not able to be estimated.

(Revised) *Battery by Body Waste*: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: (Revised) *Battery by Body Waste*: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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